

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Access 220, LLC)	WT Docket No. 02-224
Request for Waivers with Associated)	
Proposed Conditions to Establish)	
Band Manager Status in 220-222 MHz)	RM-9664

**Supplement to
Petition for Reconsideration and Clarification**

Warren C. Havens (“Havens”) and Telesaurus Holdings GB, LLC (“Telesaurus”), together DBA LMS Wireless (“LMSW”), submitted a Petition for Reconsideration and Clarification (the “Petition”) regarding the grant by the Wireless Bureau of above-captioned waiver request by Access 220, LLC (“Access”) (the “Access Request”) in a Memorandum Opinion and Order released October 16, 2002, DA 02-2717 (the “Order”).

This is a supplement, filed on May 7, 2003, based upon the below-discussed April 18, 2003 Order. In an Order released April 18, 2003, the Bureau “denied” a declaratory ruling request by Havens and also denied the waiver request that accompanied that declaratory ruling request (the “Havens Order”).¹

The Havens Order found:

Moreover, we find that Havens presents us with a broad policy statement, not unique or unusual circumstances that are factually specific to his circumstances, when he states that his waiver request should be granted because (1) application of the interconnection requirement will frustrate the AMTS provision of data telemetry and telecommand-SCADA; (2) the equipment currently available on a commercially feasible basis for AMTS service is designed primarily for non-interconnected private land communications; and (3) AMTS service will be at a competitive

¹ In the Matter of WARREN C. HAVENS, Petition for Declaratory Ruling or Waiver Regarding Section 80.123 and Other Commission’s Rules as Applied to Automated Maritime Telecommunications System Licenses, DA 03-1115, released April 18, 2003.

disadvantage with other CMRS providers if AMTS is only allowed to provide interconnected public correspondence, rather than non-interconnected private communications, to land units.² A grant of such a broad waiver request would apply equally to all AMTS licensees, and would constitute, in essence, a de facto amendment of the Commission's Rules. We decline to grant such a request.³ Rather, such relief would more appropriately be the subject of a rulemaking request.

(Havens Order, ¶ 9. Footnotes in original, but renumbered herein.) LMSW disagrees with the findings above that Havens did not, in his waiver request, present “unique or unusual circumstances.” He had no cause to and did not speak for any other AMTS licensees in his waiver request, but rather, his request was for his particular licenses and described plans. In his petition, he wrote:

Thus, for reasons noted above, and per additional details and reasons given below, *AMTS stations, at least those under my Licenses—due to my particular market research and consequent particular planned applications and equipment set forth herein—*should be permitted to provide Private Land Communications either along with interconnected service, or in lieu thereof. (Again, further details and other reasons given below.) [Emphasis added.]

Further, contrary to the Havens Order's finding that “a grant of such a broad waiver request would apply equally to all AMTS licensees, and would constitute, in essence, a de facto amendment of the Commission's Rules,” it would not constitute such de facto rulemaking. Rather, a grant of a waiver request by one licensee for the licensee's particular licenses and plans is always a precedent, but only that. Precedents are not prohibited de facto rulemaking, and if they were, then no waiver could ever be granted.⁴

² Petition at 7-9.

³ See Nextel Communications Inc., *Order*, 14 FCC Rcd 11678, 11691-92 ¶ 31 (WTB 1999) (quoting Verilink Corp., 10 FCC Rcd 8914, 8916 ¶ 6 (1995); Riverphone, *Memorandum Opinion and Order*, 3 FCC Rcd 4690, 4692 ¶ 12 (1988)).

⁴ Besides Havens, there are only two other AMTS licensees. These two unlike Havens, obtained their AMTS licenses many years prior to Havens obtaining his, and they have claimed

Unlike the Access Request, Havens did not ask that the Bureau waive some rules and in their place adopt others. Rather, Havens only asked for a partial waiver of a rule for his licenses, per his plans for them (if the rule was not clarified as he thought it reasonably should be clarified). However, the Bureau's Order does constitute what the Bureau's Havens Order prohibits-- "a broad waiver request [that] . . . appl[ies] equally to all [220 MHz] licensees, and . . . constitute[s], in essence, a de facto amendment of the Commission's Rules." In this regard, see the Petition by LMSW and its Reply to the Opposition to the Petition filed by Access.

As it stands, in the preceding half year, the Bureau has applied, to two competitors,⁵ the same rule-waiver rules in starkly conflicting manners with starkly unequal outcomes in the Order verses the Havens Order. This should be addressed both with respect to the request in the Petition (regarding reconsidering and clarifying the Order) as well as to enunciate for licensees in 220 MHz, AMTS, and other services a clear uniform standard for processing rule waiver requests.

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to be operating AMTS stations for years. If such licensees had interest in a rule waiver for their stations operations along the lines of what Havens requested, they would have requested it. They did not. Thus, there is no sound reason for the Bureau to even have assumed that grant of the Havens request would be of particular interest to other AMTS licensees. But in any case, as stated above, grant of a waiver request is a precedent, not a de facto rule change.

⁵ Havens and Access have, respectively, AMTS and 220 MHz licenses in a number of same markets, and both AMTS and 220 MHz licensees may provide land mobile and fixed services.

Respectfully submitted,

Warren Havens and
Telesaurus Holdings GB LLC
DBA, LMS Wireless
2509 Stuart Street, Berkeley CA 94705
Phone 510 841 2220, Fax 510 841 2226

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